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Attorney for Defendants TAQUERIA SANTA
 ROSA #1 AND FRANCISCO SAHAGUN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IRMA RAMIREZ; and DAREN HEATHERLY,)	No. CASE NO. CV-13-05900-PJH
Plaintiff,)	<u>Civil Rights</u>
vs.)	
)	CONSENT DECREE
TAQUERIA SANTA ROSA #1; JAMES S.)	
COLLETO and JOHN V. COLLETO, as)	
Successor Co-trustees of the JOSEPH S.)	
COLLETO and ANN D. COLLETO TRUST,)	
dated November 1, 1988, specifically as to Trust B)	
of Said Trust; and FRANCISCO G. SAHAGUN,)	
an individual dba Taqueria Santa Rosa #1,)	
Defendants.)	

WHEREAS, Plaintiffs IRMA RAMIREZ and DAREN HEATHERLY (“Plaintiffs”) have filed an action in the United States District Court, Northern District of California, alleging claims for damages and injunctive relief under the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101, *et seq.*), California Civil Code §§54, 54.1, and 54.3, California Health and Safety Code §§19955, *et seq.*, and California Civil Code §§51 *et seq.* (the Unruh Civil Rights Act) arising out of Plaintiffs’ visit to TAQUERIA SANTA ROSA #1 on November 20, 2013 and January 7, 2014; and

WHEREAS, Defendants TAQUERIA SANTA ROSA #1 AND FRANCISCO SAHAGUN dba TAQUERIA SANTA ROSA #1 owns and operates Defendant TAQUERIA SANTA ROSA #1

(collectively “Defendant TAQUERIA SANTA ROSA #1”) located at 1950 Mendocino Avenue, Santa Rosa, California (the “Subject Property”); and

WHEREAS, Plaintiffs, Defendants TAQUERIA SANTA ROSA #1, and Defendant JAMES S. COLLETTTO and JOHN V. COLLETTTO, as Successor Co-trustees of the JOSEPH S. COLLETTTO and ANN D. COLLETTTO TRUST (“Defendants COLLETTTO”), have agreed upon a settlement pursuant to which Defendant TAQUERIA SANTA ROSA #1 will perform certain remedial improvements at the Subject Property as a result of this litigation to provide access to disabled persons as well as make monetary payments to Plaintiffs and Plaintiffs’ counsel in full and final settlement of Plaintiffs’ claim for damages, attorneys’ fees, costs and litigation expenses as outlined in Section VII below; and

WHEREAS, Plaintiffs, defendant TAQUERIA SANTA ROSA #1, and defendants COLLETTTO agree that the settlement of this claim is made in good faith and in an effort to avoid expensive and protracted litigation, but without any admission or finding of liability or fault as to any allegation or matter; and

WHEREAS, the present front entrance, dining area, and restroom at the Subject Property may present architectural barriers to a wheelchair user.

NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

A. The Court has jurisdiction over the subject matter of and the parties to this Consent Decree pursuant to the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§12101, *et seq.*

B. Defendant TAQUERIA SANTA ROSA #1 and Defendants COLLETTTO, do not contest and agree not to contest the Court’s jurisdiction to enter into and enforce this Consent Decree.

II. DENIAL OF LIABILITY

Defendant TAQUERIA SANTA ROSA #1 and Defendants COLLETTTO, deny any and all legal or equitable liability under any federal, state, or local statute, regulation or ordinance, or the common law, for any damages or claims caused by or arising out of Defendant TAQUERIA SANTA ROSA #1’s and Defendants COLLETTTO’s acts or inaction. By entering into this Consent Decree, or by taking any action in accordance with it, Defendant TAQUERIA SANTA ROSA #1 and Defendants COLLETTTO,

1 do not admit any allegations contained herein or in the complaint, nor do Defendant TAQUERIA
2 SANTA ROSA #1 and Defendants COLLETTO admit any liability for any purpose or admit any issue
3 of law or fact or any responsibility for the alleged noncompliance of the Subject Property with the ADA,
4 Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), California Building Standards
5 Code, or any other state or federal building code or statute.

6 **III. PURPOSE**

7 The purpose of this Consent Decree is to

8 A. Resolve amicably the existing dispute between the parties hereto;

9 B. Settle the claims asserted against Defendant TAQUERIA SANTA ROSA #1 and Defendants
10 COLLETTO in the complaint filed in this matter;

11 C. Provide for the REMEDIAL WORK, as defined in Section VI.B. below, as necessary to
12 provide access to persons with disabilities; and

13 D. Confirm that the REMEDIAL WORK meets the “readily achievable” standard of the ADA
14 as well as the standards set forth in the ADAAG, California Building Standards Code, and other
15 applicable state or federal building code or statute.

16 **IV. BINDING EFFECT**

17 A. The undersigned representative certifies that he is an officer or agent of Defendant
18 TAQUERIA SANTA ROSA #1 and is fully authorized to enter into the terms and conditions of this
19 Consent Decree and that he or she is fully authorized to execute this document and legally bind
20 Defendant TAQUERIA SANTA ROSA #1 to the provisions of this Consent Decree.

21 B. The undersigned representative certifies that he is an officer or agent of Defendants
22 COLLETTO and is fully authorized to enter into the terms and conditions of this Consent Decree and
23 that he is fully authorized to execute this document and legally bind Defendants COLLETTO to the
24 provisions of this Consent Decree.

25 C. The undersigned representative certifies that he or she is an officer or agent of Plaintiffs and
26 is fully authorized to enter into the terms and conditions of this Consent Decree; that he or she is fully
27 authorized to execute this document and legally bind Plaintiffs to the provisions of this Consent Decree;

and that he or she has not assigned, transferred, or purported to assign or transfer to any person or entity any claim or other matter which is the subject of this Consent Decree.

V. WORK TO BE PERFORMED

A. In general, Defendant TAQUERIA SANTA ROSA #1 shall make the Subject Property accessible to persons with disabilities in accordance with the "Readilby Achievable" standard under 28 C.F.R. part 36 in conjunction with the ADAAG.

B. Specifically, as settlement of the equitable claim brought by Plaintiffs, Defendant TAQUERIA SANTA ROSA #1 shall undertake remedial measures to make the following elements of the Subject Property accessible to persons with disabilities, which constitutes the removal of architectural barriers pursuant to the readily achievable standard as set forth in the Code of Federal Regulation (28 C.F.R. 36.304), the ADA, and the ADAAG, as referred to in the ADA and ADAAG, California Building Standards Code, and other applicable state and federal building code or statute, and which remedial measures are referred to herein as the "REMEDIAL WORK";

ENTRANCE

- excessive door pressure (approximately at 15lbs);

DINING

- inaccessible service counter (approximately at 46" to 47");
- inaccessible table seating (table height and noncomplying pedestal);
- inaccessible table seating outside (table height and noncomplying pedestal);
- lack of required five (5) percent accessible seating.

PATH OF TRAVEL

- noncomplying men's and women's restrooms; (unisex restroom and/or single accommodation for the disabled);
- no International Symbol of Accessibility (ISA) signage at both restrooms;
- door knobs and latches that require grasping, turning or pinching (lock in both restrooms. There is no levered door hardware on the women's restroom or men's restroom);

- excessive door pressure (approximately at 10lbs. for both restrooms);
- grab bar(s) too short (rear grab bar is at approximately 24" and side grab bar is at approximately 36" in both restrooms);
- flush control of toilet on the narrow side between wall and toilet tank wrong side in both restrooms;
- dispenser(s) located too high/not usable in both restrooms (paper towel dispenser is approximately at 55");
- paper towel dispenser(s) too high or not properly placed (approximately 55" in both restrooms);
- noncomplying mirror placement in both restrooms (approximately at 53" from the floor); and
- insufficient clear space in both restrooms.

C. The work to be performed pursuant to this Consent Decree shall be completed within three (3) years of the date the Court enters this Consent Decree.

D. The parties also agree that the REMEDIAL WORK meets the "readily achievable" standard of the ADA as well as the standards set forth in the ADAAG, California Building Standards Code, and other applicable state or federal building code or statute.

VI. MONETARY PAYMENT

A. In full and complete settlement of Plaintiffs' claims against Defendant TAQUEURIA SANTA ROSA #1 and Defendants COLLETTTO, it is further agreed that Defendant TAQUEURIA SANTA ROSA #1 and Defendants COLLETTTO shall pay to Plaintiffs and their counsel, Thomas E. Frankovich, A Professional Law Corporation, the sums set forth in a Mutual Settlement Agreement entered into among the parties in a court supervised mediation. The Mutual Settlement Agreement and Release itself is not a part of this Consent Decree.

VII. MODIFICATION

There shall be no modification of this Consent Decree without written approval of all parties hereto.

VIII. EFFECTIVE DATE

This Consent Decree is effective upon the date of its entry by the Court.

IX. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the parties to this action for the duration of this Consent Decree for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree, including but not limited to attorneys' fees, costs and litigation expenses incurred in enforcing this Consent Decree, or for any further relief as the interest of justice may require.

X. TERMINATION AND SATISFACTION


Upon Defendant TAQUERIA SANTA ROSA #1's completion of the work to be performed, as specified, pursuant to this Consent Decree, on or before three (3) years of the Court's entry of this Consent Decree, whichever occurs earlier, the Court's jurisdiction of this matter shall terminate unless the parties show good cause for the continuance of this Consent Decree.

The undersigned hereby consent to the foregoing Consent Decree.

Dated: February -11-2015 For Defendant TAQUEURIA SANTA ROSA #1


FRANCISCO SAHAGUN dba
TAQUERIA SANTA ROSA #1 AND

Dated: For Defendants COLLETT

JAMES COLLETT
 (CO-TTE)
JOHN COLLETT

1 Dated: 3/11/2015

For Plaintiff IRMA RAMIREZ

2
3
4 *Irma Ramirez*
IRMA RAMIREZ

5
6 Dated: 3/11/2015

For Plaintiff DAREN HEATHERLY

7
8 *Daren J. Heatherly*
9 DAREN HEATHERLY

10
11 **ORDER**

12 **IT IS SO ORDERED.**

13 Dated: 3/31/15

14 HONORABLE PHYLIS J. HAMILTON
15 UNITED STATES DISTRICT COURT JUDGE

